THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.18544 of 2006

DATED:13.11.2007

Between:

Muvva Venkaiah ….Petitioner

AND

The Government of India,
Represented by the Deputy Secretary,
Ministry of Home Affairs,
Freedom fighter's Division (HC)
Lok Nayak Bhavan, Khan Market,
New Delhi and others ….Respondents

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THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.18544 of 2006

ORDER:

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This writ petition is filed praying for issuance of a writ, order or direction, particularly one in the nature of writ of Mandamus declaring the impugned proceedings No.52/CC/104/06-FF (HC) dt.08.05.2007 of the second respondent in rejecting the petitioner's case for grant of Central Samman Pension on the flimsy and unwarranted grounds, as illegal, arbitrary, and violative of Articles 14, 19 and 21 of the Constitution of India and consequently set aside the same with a further direction to the respondents to pay the Pension to the petitioner along with arrears forthwith and pass such other suitable orders.

2. The prayer was amended as per the directions of this Court dated 18.07.2007 in W.P.M.P.No.16827 of 2007.

3. Muvva Venkaiah, the writ petitioner filed the present writ petition and the fifth respondent is Muvva Venkataiah.

4. It is stated by the petitioner in the affidavit filed in support of the petition that he is a freedom fighter, participated in the freedom struggle during the year 1947-48 for the merger of erstwhile Hyderabad State into the Indian Union. Pursuant to the Swatantrata Sainik Sanman Pension Scheme 1980 (hereinafter called as "the pension scheme") introduced by the first respondent- Government of India, he submitted an application dated 03.12.1997 along with all the

required documents to` the first respondent and accordingly, his application was placed before the Hyderabad Special Screening Committee and the said Committee has recommended his application *vide* File No.112/477/98 through Agenda No.468, dated 31.05.1998. It is further stated by the petitioner that pursuant to the said recommendations, the first respondent has sent his application to the fourth respondent for verification and the fourth respondent basing on the recommendations of the District Collector, Khammam dated 11.01.2003 sent a reply to the first respondent *vide* Letter No.4010/FF.I/A2/03, dated 01.04.2003 recommending his name for grant of pension.

5. It is further stated by the petitioner that even though the entire process for granting of the pension was completed, the first respondent has not passed any orders granting pension to him and to his shock and surprise, he came to know that the fifth respondent impersonated him, by taking advantage of surname, which is same to both of them and pension which has to be granted to him is being granted to the fifth respondent herein by the second respondent *vide* proceedings No.112/477/98FF (HC) (D), dated 02.09.2004. But the fact remains that his name and the fifth respondent's name is different, father name is different, village and Mandal is different. It is further stated that beyond his knowledge and understanding, the pension ought to have been granted to him is granted to the fifth respondent and by coming to know of it, immediately, he personally visited and also made representations dated 12.09.2005, 14.10.2005 and 23.12.2005 to the first respondent bringing to his notice about the sanctioning and drawing of his pension by the fifth respondent and to take immediate steps for cancelling the pension granted to the fifth respondent and to grant the same to him. It is further stated that he submitted representation to the fourth respondent and the District Collector,

Khammam and in pursuance of the same, the District Collector was pleased to conduct enquiry and sent the report in Rc.No.C6/1664/04, dated 15.02.2006 to the fourth respondent by clearly stating that

> "The Government through Lr.No.4010 /FF.I/A2/03, dated 01.04.2003 recommended to the Dy. Secretary to Government of India, Ministry of Home Affairs, New Delhi for sanction of SSS Pension to Sri Muvva Venkaiah S/o. Sangaiah R/o. Budharam Village, Nelakondapally Mandal of Khammam District. His name was recommended by the HSSC *vide* No.112/477/98-FF (HC).
>
> I request kindly verify these files and sanction Freedom Fighter Pension to Sri Muvva Venkaiah S/o. Sangaiah R/o. Budharam Village of Nelakondapally Mandal of Khammam District whose name was recommended by the HSSC duly cancelling the sanction orders of Sri Muvva Venkaiah S/o. Subbaiah, R/o. Thutikuntla Village, Bonakal Mandal of Khammam District. (Sl.NO.1)."

The above said report speaks for itself that the fifth respondent played fraud by impersonating the petitioner and drawing the pension on his application and on his enquiry, he came to know that there is no application submitted by the fifth respondent for granting pension.

6. It is further averred in paragraph 4 of the affidavit filed in support of the writ petition that in spite of the above said report, dated 15.02.2006 submitted by the District Collector, Khammam, so far no action is taken for cancelling the sanction orders of pension granted to the fifth respondent and sanctioning orders of pension to the petitioner. The inaction of the respondents in spite of fraud being played by the fifth respondent is beyond the knowledge of the

petitioner and also understanding. Now the petitioner aged 81 years, suffering a lot and added to this, action of the respondents in not granting the pension by duly cancelling the pension granted to the fifth respondent is putting him to unbearable suffering and agony. As stated above, the petitioner fought in the freedom struggle and suffered a lot in the hands of Nizams and when the first respondent-Government introduced the noble pension scheme, the same cannot be frustrated by the persons like the fifth respondent at his cost. It is further stated that a statutory duty is cast upon the official respondents herein to take immediate action for cancelling the pension sanction orders granted to the fifth respondent by granting the same to the petitioner, as he is entitled for the same for the aforesaid facts. As the petitioner is aged 81 years, he is suffering severe ill health and bedridden and if this Court do not come to rescue him at this fag end of his life, he may have to undergo miserable days for want of medical care etc.,

7. It is also stated that pursuant to his application dated 03.12.1997 for grant of Swatantrata Sainik Sanman Pension Scheme, 1980, his case was placed before the Hyderabad Special Screening Committee and the said Committee after thorough examination recommended his case along with others vide File No.112/477/1998 FF (HC) through Agenda No.468 dated 31.05.1998 and pursuant to the said recommendation, the first respondent sent his application to the fourth respondent Government of A.P., who verified the entire file through the District Collector, Khammam and recommended his name for grant of Pension *vide* Letter No.4010/FF.I/A2/03 dt.01.04.2003. It is further stated that when the petitioner was eagerly waiting for grant of pension whereas to his shock and surprise, he came to know that the fifth respondent was granted pension on his file i.e., File No. 112/477/1998 FF (HC) and further came to know that the fifth respondent, who is not

at all a freedom fighter impersonated the petitioner by managing the authorities, taking advantage of the similar name i.e., Muvva Venkataiah whereas his name is Muvva Venkaiah and the fact remains that father name and address are different. It is further stated that in spite of number of representations and relentless efforts put by him by going around respondents No.1 and 2, they have not taken any action even though they are duty bound to correct such error or deliberate act whatsoever, the petitioner was constrained to file the above writ petition.

8. Further, in the counter-affidavit in para 22 (a) of the second respondent, the following averments were made:-

> ……."Contents of these paras are admitted to the extent that the claim of one Shri Muvva Venkataiah, S/o. Subbaiah was wrongly processed in file No.112/477/98-FF (HC) through oversight. This file number pertained to the petitioner."

This admission clinchingly proves the petitioner's case that all these years, he was denied pension by illegally granting the same to the fifth respondent on his file as stated above. While cancelling the pension illegally granted to the fifth respondent clearly stating that the file belongs to the petitioner and he was not born as on the date of freedom struggle etc. To his shock and surprise, the second respondent illegally rejected his claim by issuing impugned orders *vide* proceedings No.52/CC/104/06-FF (HC) dt.08.05.07 on the flimsy ground that the recommendation slip of the Screening Committee is not available in his file, which pleading is contrary to their own pleading at para-22(a) of the counter-affidavit as extracted above. It is further stated that now it is an admitted that the fifth respondent was granted pension on his file by way of impersonation and had there been no recommendation slip in the file, pension ought not to have

been granted to the fifth respondent and this naked fact speaks for itself about the deliberate action of the first and the second respondent's in denying the legitimate pension to the petitioner by acting in most unwarranted and whimsical manner. It is also further stated that in the impugned order that there is no record or document to establish that the case of the petitioner was recommended by the Screening Committee, which is also totally incorrect pleading for the reason that there is ample documentary evidence available on record i.e., Agenda list of the Screening Committee approved by the Convener of the Committee (Deputy Secretary Union of India), State Government recommendation letter dt.01.04.03, wherein the fact of recommendation of his case by the Screening Committee is stated and also latest letter furnished by the fourth respondent Government of A.P., to the second respondent herein *vide* proceedings Lr.No.41737/FF.I/A2/06-1 dt.19.02.07, recommending his case for Pension after once again thoroughly verifying through District Collector, Khamma. It is also stated in the said letter as follows:

> "…..The Collector has stated that on verification his name was recommended by the HSSC *vide* No.112/477/98-FF (HC). As per Voter identity, 1995, his age was 70 years and thus as on 1947, his age was 22 years as such his case is genuine and his participation was established."

Hence, all the above stated facts and documentary evidence clinchingly proves his case and establishes that the impugned rejection order is *prima facie* illegal, unwarranted and arbitrary exercise of power which is putting the petitioner unbearable suffering at his fag end of 82 years. In such circumstances, the petitioner approached this Court praying for appropriate reliefs.

9. In the counter-affidavit filed by the first respondent, the back ground facts had been narrated commencing from paras 4 to 19 and it

is needless to say that these averments relate to the general historical back ground of all most all the cases. In para 21 of the counter-affidavit, it is averred that the petitioner has claimed that his case was considered by Hyderabad Special Screening Committee (HSSC). However, it is to point out that consideration does not *ipso facto* imply recommendation. The requisite and mandatory HSSC-recommendation slip, signed by the Chairman and the Members of the HSSC, is not available on record in his case. In the absence of a recommendation slip of the HSSC, it cannot be presumed that his case was duly recommended by the HSSC. There is also no other document on record to fully and duly establish that his case was recommended by the HSSC. Therefore, his case cannot be taken to be an HSSC-recommended case.

10. It is further averred in relation to paragraphs 3 to 6 that the contents of these paras are admitted to the extent that the claim of one Sri Muvva Venkataiah S/o. Subbaiah was wrongly processed in file No.112/477/98-FF (HC) through oversight. This file number pertained to the petitioner. The matter has been reviewed and it has been observed that even otherwise pension was wrongly sanctioned to Sri Muvva Venkataiah S/o. Subbaiah. The matter is being processed further for obtaining the approval of the competent authority for cancellation of pension of Sri Muvva Venkataiah S/o. Subbaiah. It is further averred that the claim of the petitioner has also been simultaneously considered. It is observed that the State Government has sent their verification report regarding the claim of the petitioner treating the case as HSSC recommended. However, as already submitted consideration *ipso facto* does not imply recommendation. The requisite and mandatory HSSC-recommendation slip, signed by the Chairman and the Members of the HSSC, is not available on record in his case. In the absence of a recommendation slip of the

HSSC, it cannot be presumed that the case of the petitioner was duly recommended by the HSSC. It is further submitted that there is also no other document on record to fully and duly establish that his case was recommended by the HSSC. Therefore, his case cannot be taken to be an HSSC-recommended case. In view of this, the claim of the petitioner does not meet the eligibility criteria and evidentiary requirements of the scheme. It is therefore, not possible to accept the petitioner's claim for grant of Central Samman Pension. The matter is being processed further for obtaining the approval of the competent authority for rejection of petitioner's claim. It is further stated that this Court may order cancellation of the wrongly issued sanction order dated 13.08.2003 and dismiss the writ petition.

11. In the counter-affidavit filed by the fifth respondent, specific stand has been taken that the allegation that the fifth respondent impersonated the petitioner is absolutely incorrect. The second respondent through letter dated 02.07.2004 conveyed to the third respondent about the sanction of the pension at the rate of Rs.3,000/- per month + dearness relief from 10.03.2004 onwards to him. It is further mentioned in the said letter that his wife Smt. Muvva Laxmamma alias Laxmi will be entitled to family pension after his demise. A copy of the letter, dated 02.09.2004 is annexed to this counter-affidavit. It is further stated that the third respondent through proceedings No.P.A.O./P. & M/M.H.A/F.F./1976/6436-38, dated 29.11.2004 regarding Swatantra Sainik Samman Pension Scheme forwarded his documents stating date of commencement as 10.03.2004 at the rate of Rs.3,000/- per month + D.A., at the rate of 39% with effect from 10.03.2004 onwards. It is further stated that the name of the Bank is mentioned as Andhra Bank, Collectorate Branch, Khammam District with saving Bank account No.1301. The third respondent through proceedings dated 07.12.2004 authorized the

Manager, Andhra Bank, Gandhi Chowk, Khammam to make monthly payments to him as per his proceedings in P.A.O./P. & M/M.H.A./F.F/19766436-38 dated 29.11.2004 to the holder of T.P.O.No. M.H.A.F.F.04 28553 resident of Thutikuntla, Bonakal Mandal, Khammam District from 10.03.2006 at the rate of Rs.3,000/- per month. It is also mentioned in the said proceedings that after his death, F.P., at the rate of Rs.3,000/- per month may be paid to his wife to Smt. Muvva Laxmamma. A copy of this proceeding is annexed to the counter-affidavit. Thus, the allegation that the pension ought to have been granted to the petitioner is granted to him is absolutely incorrect.

12. In respect of the allegation that the District Collector through proceedings dated 15.02.2006 recommended to give pension to the petitioner duly cancelling the sanction orders issued in his favour, it is stated that he is not aware of any such proceedings. The District Collector cannot issue any such proceedings adversely affecting his rights without giving any notice to him. In fact, the District Collector, Khammam through letter, dated 25.01.2006 directed the Mandal Revenue Officer informing to take necessary action on his representation regarding sanction of land. A copy of the said letter in dis.No.E-3/614/2005 dated 25.01.2006 also annexed to this counter-affidavit. The alleged report dated 15.02.2006 allegedly issued by the District Collector, Khammam is without any notice to him. The Collector, Khammam District through R.C.No.C6/1664/2004 dated 28.10.2006 issued notice to him to appear before the District Revenue Officer, Khammam on 02.12.2006, Wednesday at 3.00 p.m. along with age proof, H.S.S.C. Proof and evidence of participation in Hyderabad Liberation movement during the year 1947-48 for verification. From the notice issued to him it is evident that similar notice is also issued to the petitioner. It is further stated that he (fifth respondent) attended the office and submitted all his papers. After that he did not receive any further information from the office of the Collector, Khammam District.

Thus, there are no proceedings allegedly issued by the District Collector for cancellation of the pension orders issued to him.

13. It is further stated that if at all the petitioner is having any grievances for not sanctioning of his pension, he can agitate it for his relief, but he cannot dispute the pension that the fifth respondent is getting and the fifth respondent is aged about 78 years and he should not be dragged into this type of frivolous litigation.

14. Reply affidavit had been filed and an additional affidavit to the reply also had been filed.

15. In the additional affidavit, it is averred that in addition to the contents of para 16 of the main affidavit, it is stated that it has been decided

(i) that 100% re-verification of all cases would be undertaken by the three State Governments; and

(ii) a committee of eminent freedom fighters would scrutinize the results of the re-verification and finalize its recommendations, ensuring that no fake claimant gets pension and no genuine freedom fighter is overlooked.

This decision is only with regard to those cases, which were referred to the respective State Governments by this Ministry for verification in 1988 and 1999. All other claims, which do not pertain to the erstwhile HSSC and were not sent for State verification are to be processed under the normal provisions of the Swatantrata Sainik Samman Pension Scheme, 1980.

16. It is also averred that in addition to the contents in para 19 of the main affidavit, it is stated that the Government of Andhra Pradesh, after examination of the enquiry report of the Director General (Vigilance & Enforcement), has decided to undertake 100% re-verification of all

cases, including about 3384 old sanctioned cases. It is further stated that as averred in para 22 of the main counter-affidavit, the matter has been reviewed and it has been observed that pension was wrongly sanctioned to Sri Muvva Venkataiah S/o. Subbaiah (Respondent No.5). The State Government of Andrha Pradesh has subsequently reported that he had produced a tampered voter list indicating his age in 1988 as 59 years. As per the original voter list, his age was 36 years as in 1988. Therefore, he was not even born at the time of the Hyderabad Liberation Movement in 1947-48. It has been decided to cancel the same with full recovery and a show cause notice has been issued to him *vide* letter dated 08.05.2007. The Government of Andrha Pradesh has been simultaneously requested on 08.05.2007 to institute criminal proceedings against him.

17. It is further stated that the claim of the petitioner has also been simultaneously considered. It is observed that the State Government has sent their verification report regarding the claim of the petitioner treating the case as HSSC recommended. However, as already submitted consideration *ipso facto* does not imply recommendation. The requisite and mandatory HSSC-recommendation slip, signed by the Chairman and the Members of the HSSC, is not available on records in his case. In the absence of a recommendation slip of the HSSC, it cannot be presumed that his case was duly recommended by the HSSC. There is also no other document on record to fully and duly establish that his case was recommended by the HSSC. Therefore, his case cannot be taken to be an HSSC-recommended case. In view of the same, the claim of the petitioner does not meet the eligibility criteria and evidentiary requirements of the scheme.

18. This Court issued rule nisi on 07.09.2006.

19. Elaborate submissions were made by Sri K. Rathanga Pani Reddy, the learned counsel representing the writ petitioner, Sri A. Rajasekhar Reddy, the learned counsel representing R1, R2 and R3, the learned Government Pleader for Revenue representing R4 and also Sri V. Raghu, the learned counsel representing R5.

20. As can be seen from the respective stands taken by the parties, several of the facts are not in controversy at all. The main ground taken in the additional counter-affidavit filed by one Sri S.D. Kaushik, who was authorized to swear the affidavit on behalf of the Government of India, Ministry of Home Affairs, is that in the absence of any recommendation by Hyderabad Special Screening Committee (HSSC), it cannot be presumed that the case of the petitioner was duly recommended by HSSC.

21. It is pertinent to note that the mistake committed, in fact, had been admitted. The grounds of impersonation or fraud, which had been averred by the petitioner, cannot be said to be sustainable contentions, especially, in the light of the stand taken by the fifth respondent in the counter-affidavit. It may be that the writ petitioner may agitate relating to his legal rights and whether the fifth respondent is entitled to the sanction of such pension or not has to be decided independently and the fifth respondent is also at liberty to agitate his rights, if any, in accordance with law. Therefore, this Court is satisfied that no acceptable material, as such, had been placed before this Court relating to the alleged impersonation or fraud averred in the affidavit, filed in support of the writ petition. However, the stand taken by the first respondent in the additional counter-affidavit also, in the facts and circumstances, in the considered opinion of this Court, cannot be said to be a sustainable stand, especially, in the light of the averments made in the counter-affidavit answering the averments

made in the affidavit, filed in support of the writ petition.

22. Hence, in the light of the facts and circumstances, this Court is of the considered opinion that though the impugned proceedings, as such, cannot be sustained, the fifth respondent is given liberty to agitate his rights. However, the petitioner is entitled to the relief to the extent of reconsideration of his case by respondents 1 and 2, in the light of the facts and circumstances, especially, in the light of the specific averments made in their own counter-affidavits, in accordance with law.

23. Accordingly, let respondents No.1 and 2 re-examine the whole issue and reconsider the case of the petitioner in relation to the sanction of pension under Swatantrata Sainik Samman Pension Scheme, 1980, pursuant to the recommendation Letter No.4010/FF.I/A2/03, dated 01.04.2003, of the fourth respondent on the application of the petitioner, dated 03.12.1997, in accordance with law, within a period of four (4) weeks from the date of receipt of a copy of this order.

24. With the above directions, the writ petition is disposed of. No order as to costs.

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P.S.NARAYANA, J

DATED:13th November, 2007
Note: L.R. Copy to be marked: Yes/No
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